

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

SCHIAPARELLI, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2112

Decision No. CU 5523

Counsel for claimant:

Harold Glasser, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by SCHIAPARELLI, INC. for \$13,000.00 based upon the asserted loss of debts due from a Cuban corporation.

Under Title V of the International Claims Settlement Act of 1949, as amended [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or

taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant, SCHIAPARELLI, INC., was organized under the laws of New York and is a wholly owned subsidiary of Kayser-Roth Corporation, a national of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of Kayser-Roth Corporation, Claim No. CU-2111.) An officer of claimant has certified that from August 1, 1958 to May 24, 1961, 75% of claimant's outstanding stock was owned by Kayser-Roth Corporation, and 25% was owned by a nonnational of the United States. Further, less than 1.1% of the stock of Kayser-Roth Corporation was owned by residents of foreign countries. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes an agreement concluded on February 4, 1959 between claimant and Ellis Hosiery Mills of Cuba, a Cuban corporation hereafter referred to as Ellis. Pursuant to this agreement Ellis, as licensee, was given the exclusive right to use the trade-mark "Schiaparelli" on women's hosiery in Cuba for a term commencing on July 1, 1959 and expiring on June 30, 1962. In consideration for such license Ellis agreed to pay claimant a minimum guaranteed royalty of \$4,000.00 for the first and second fiscal years, and \$5,000.00 for the third fiscal year, payable in advance in equal monthly installments beginning on July 1, 1959.

The record, including an affidavit of the former President of Ellis, establishes that no royalties were paid to claimant under the license agreement because such payments were precluded by the currency controls of Cuban authorities and their refusal to permit the transfer of funds outside of Cuba.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission holds that implementation of Law 568 constituted an intervention by the Government of Cuba in the contractual rights of claimant with respect to the royalty payments. (See Claim of Jantzen, Inc., Claim No. CU-1531.) The record also establishes that Ellis was confiscated by the Government of Cuba on May 14, 1962 by Resolution No. 2330 pursuant to Law 664 of December 23, 1959.

However, the Commission finds that by virtue of the confiscation or other taking of Ellis on May 14, 1962, the Government of Cuba succeeded to the remaining obligation of Ellis pursuant to the license agreement. (See Claim of Waldes Kohinoor, Inc., Claim No. CU-0414 and Claim of Pilgrim Plastics Corporation, Claim No. CU-1979.)

In view of the above, the Commission finds, in the absence of evidence to the contrary, that claimant's losses, each in the amount of \$333.33-1/3, occurred on July 1, 1959 and on the first day of each month thereafter, the last such loss having occurred on July 1, 1961; and in the amount of \$416.66-2/3 occurred on July 1, 1961 and on the first day of each month thereafter, the last such loss having occurred on June 1, 1962, as follows:

<u>DUE DATE</u>	<u>AMOUNT</u>
July 1, 1959	\$ 333.33
August 1, 1959	333.33
September 1, 1959	333.34
October 1, 1959	333.33
November 1, 1959	333.33
December 1, 1959	333.34
January 1, 1960	333.33
February 1, 1960	333.33
March 1, 1960	333.34
April 1, 1960	333.33
May 1, 1960	333.33
June 1, 1960	333.34
July 1, 1960	333.33
August 1, 1960	333.33
September 1, 1960	333.34
October 1, 1960	333.33
November 1, 1960	333.33
December 1, 1960	333.34
January 1, 1961	333.33
February 1, 1961	333.33
March 1, 1961	333.34
April 1, 1961	333.33
May 1, 1961	333.33
June 1, 1961	333.34
July 1, 1961	416.67
August 1, 1961	416.67
September 1, 1961	416.66
October 1, 1961	416.67
November 1, 1961	416.67
December 1, 1961	416.66
January 1, 1962	416.67
February 1, 1962	416.67
March 1, 1962	416.66
April 1, 1962	416.67
May 1, 1962	416.67
June 1, 1962	416.66
	<u>\$13,000.00</u>

Accordingly, the Commission concludes that claimant's aggregate loss of royalties was in the amount of \$13,000.00 within the meaning of Title V of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
July 1, 1959	\$ 333.33
August 1, 1959	333.33
September 1, 1959	333.34
October 1, 1959	333.33
November 1, 1959	333.33
December 1, 1959	333.34
January 1, 1960	333.33
February 1, 1960	333.33
March 1, 1960	333.34
April 1, 1960	333.33
May 1, 1960	333.33
June 1, 1960	333.34
July 1, 1960	333.33
August 1, 1960	333.33
September 1, 1960	333.34
October 1, 1960	333.33
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June 1, 1961	333.34
July 1, 1961	416.67
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September 1, 1961	416.66
October 1, 1961	416.67
November 1, 1961	416.67
December 1, 1961	416.66
January 1, 1962	416.67
February 1, 1962	416.67
March 1, 1962	416.66
April 1, 1962	416.67
May 1, 1962	416.67
June 1, 1962	416.66

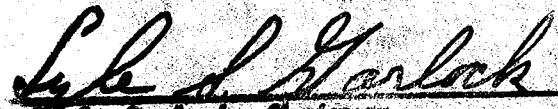
\$13,000.00

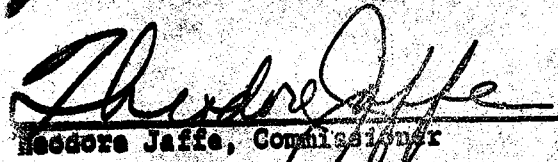
CERTIFICATION OF LOSS

The Commission certifies that SCHIAPARELLI, INC., suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirteen Thousand Dollars (\$13,000.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUL 29 1970


S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FGSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)